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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,735	10/29/2003	Bradford Scott Baron	9397	7725

27752 7590 01/18/2006

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EXAMINER	
GRAVINI, STEPHEN MICHAEL	
ART UNIT	**PAPER NUMBER**
3749	

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/697,735	BARON ET AL.	
	Examiner	Art Unit	
	Stephen Gravini	3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *28 November 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☐ Claim(s) *1-50* is/are pending in the application.

4a) Of the above claim(s) *1-29* is/are withdrawn from consideration.

5)☐ Claim(s) *43,44 and 50* is/are allowed.

6)☐ Claim(s) *30-42 and 45-49* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-19, drawn to a subcombination apparatus, classified in class 34, subclass 595.

II. Claims 20-22, drawn to a subcombination apparatus, classified in class 34, subclass 600.

III. Claims 23-27, drawn to a subcombination apparatus, classified in class 34, subclass 602.

IV. Claims 28-29, drawn to a subcombination apparatus, classified in class 34, subclass 603.

V. Claims 30-50, drawn to a subcombination apparatus, classified in class 34, subclass 606.

The inventions are distinct, each from the other because of the following reasons:

Inventions of group I and groups II-V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group I has separate utility such as containing the independently claimed feature of a control circuit that initiates spraying of said benefit composition, wherein said control circuit prevents said benefit composition from being sprayed when said closure structure sensor indicates that said closure structure is not in said closed position, which is not a limitation in any of the other independently claimed inventions. See MPEP § 806.05(d).

Inventions of group II and groups I & III-V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group II has separate utility such as containing the independently claimed feature of a control circuit that initiates spraying of said benefit composition, wherein said control circuit prevents said benefit composition from being sprayed when said motion sensor indicates that said movable chamber is not in motion, which is not a limitation in any of the other independently claimed inventions. See MPEP § 806.05(d).

Inventions of group III and groups I-II & IV-V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group III has separate utility such as containing the independently claimed feature of a control circuit configured to initiate a first spraying interval of said spraying event and a second spraying interval of said spraying event, such that said first spraying interval and said second spraying interval are separated in time, which is not a limitation in any of the other independently claimed inventions. See MPEP § 806.05(d).

Inventions of group IV and groups I-III & V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group IV has separate utility such as containing the independently claimed feature of a control circuit configured to increase a duty cycle of said pulse-width modulated variable output signal as a battery produced output voltage decreases, thereby causing

a pump apparatus to provide a substantially constant volume of said benefit composition to said nozzle even though said battery has become partially discharged such that it cannot maintain its rated output voltage, which is not a limitation in any of the other independently claimed inventions. See MPEP § 806.05(d).

Inventions of group V and groups I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of group V has separate utility such as containing the independently claimed feature of a control circuit that initiates spraying of said benefit composition, wherein said control circuit prevents said benefit composition from being sprayed when said at least one safety sensor indicates that a predetermined condition exists, which is not a limitation in any of the other independently claimed inventions. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Claims 1-29 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on November 28, 2005.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 30-32, 35, and 37-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Shim et al. (US 5,219,371). Current Office practice guides examination of applications such that claims must be construed broadly and reasonably in light of the specification. In this application, it is considered that the claimed terms, as defined in the specification, are broadly and reasonably construed from the specification such that the prior art can be considered to anticipate the claimed invention. Shim is considered to disclose the claimed invention comprising:

a source of benefit composition **60** wherein the disclosed steam is considered to expressly anticipate the claimed source of benefit composition because in the claimed invention and the prior art teachings of primary reference Shim both function to benefit fabric in an article treating apparatus; a nozzle **64** in communication with said source of benefit composition; a dispensing apparatus **63** that compels said benefit composition from said source of benefit composition toward said nozzle, thereby spraying said benefit composition wherein the disclosed steam injection valve is considered to expressly anticipate the claimed dispensing apparatus because in the claimed invention and the teachings of Shim both function to dispense a substance to a fabric; at least one safety sensor **50** wherein the disclosed timer is considered to inherently anticipate the claimed safety sensor because both function to regulate an unsafe condition in a fabric treating device such as adversely impacting the environment due to inefficient solvent recovery; and

a control circuit as shown in figure 2 that initiates spraying of said benefit composition, wherein said control circuit prevents said benefit composition from being sprayed when said at least one safety sensor indicates that a predetermined condition exists. Shim is also considered to disclose the claimed humidity safety sensor at column 5 line 4, first and second spraying intervals at column 5 line 10, drying appliance in a single enclosure within the appliance **13**, integrated controller **80**, exterior and interior enclosures as shown in figure 1, and at least one safety sensor comprises a closure structure sensor, said closure structure having a closed position and at least one open position, said closure structure allowing access to said chamber; and wherein said predetermined condition occurs when said closure structure sensor indicates that said closure structure is not in said closed position at column 4 line 58 through column 5 line 24 wherein the disclosed steam flow is considered to anticipate the claimed open and closed positions because both provide indications whether the device is open or closed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 33-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shim in view of Pletcher et al. (US 6,474,563). Shim is considered to disclose the claimed invention, as rejected above, except for the claimed charging circuit imparting an electrical charge from a high voltage power supply with variable output voltages. Pletcher, another fabric treating device, is considered to disclose a charging circuit imparting an electrical charge at column 4 line 60 through column 6 line 65. It would have been obvious to one skilled in the art to combine the teachings of Shim with the charging circuit imparting an electrical charge, considered disclosed by Pletcher, for the purpose of imparting an electrical charge on home care products, especially fabric used in home care. Furthermore, Shim in view of Pletcher, is considered to disclose the claimed invention, except for the claimed high voltage power supply with variable output voltages for use in conjunction with a charging circuit. It would have been an obvious matter of design choice to provide a high voltage power supply with variable output voltages, since to generate a charge in a charging circuit it is well known that a power supply must be used to generate a higher variable voltage difference to impart a charge.

Claims 45-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shim in view of Schaal (US 5,301,379). Shim is considered to disclose the claimed invention, as rejected above, except for the claimed temperature or pressure safety sensors. Schaal, another fabric treating device, is considered to disclose a temperature

or pressure safety sensors at column 6 lines 14 through 24. It would have been obvious to one skilled in the art to combine the teachings of Shim with the temperature or pressure safety sensors, considered disclosed by Schaal, for the purpose of providing an overpressure or over temperature safety feature in a fabric treating device.

Allowable Subject Matter

Claims 36, 43-44, and 49-50 are considered allowable over the prior art.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., In re Berg, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); In re Longi, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); In re Van Ornum, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); In re Vogel, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and In re Thorington, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 30, 33-34, 36-37, and 49 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 27, 29, and 38-39 of copending Application No. 10/418,595. Although the conflicting claims are not identical, they are not patentably distinct from each other because the copending feature of benefit composition is also claimed in the present application, the

copending feature safety system directly correlates as the presently claimed safety sensor because both provide a sensor system for safety, while the copending operating system and charging component is considered to correspond to the presently claimed control circuit since both operate a charge to control electrical charge generation. It would have been obvious to one skilled in the art to combine the three allowed features into a current claim to extend patent rights since the current application is not a continuing application from the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ehud Gartenberg can be reached on 571 272 4828. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG
January 13, 2006

Stephen Gravini